

Amendment No. 1 to HB3728

Watson
Signature of Sponsor

AMEND Senate Bill No. 3308*

House Bill No. 3728

by deleting SECTION 1 in its entirety and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 6, Part 3, is amended by adding the following as a new section:

40-6-312

(a)

(1) Where a court order based on probable cause is required, a law enforcement officer may seek a surveillance warrant to obtain information about the location of a vehicle, vessel, or item, or to obtain precision location information of an electronic device from an electronic communications service as provided in this section.

(2) A surveillance warrant is an order in writing in the name of the state and signed by any judge authorized to issue a search warrant. The warrant shall authorize a law enforcement officer to emplace a mobile tracking device and receive the location information of a vehicle, vessel, or item, or direct an electronic communications service to deliver information to a law enforcement officer of the global positioning system location of an electronic device. The warrant may authorize intrusions into a vehicle, vessel, item or container, or onto real property, for the purpose of installing a tracking device or for maintenance or retrieval of a tracking device within the jurisdiction of a judge of a general sessions court or to any part of the state if authorized by a judge of a court of record.

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(3) A wiretap order authorizing the interception of wire or electronic communications pursuant to § 40-6-304 may include the authority granted to a law enforcement officer under this section within the wiretap order.

(b) A surveillance warrant may be issued under the following grounds:

(1) Where the information from the tracking device or signal transmitted by an electronic device may provide evidence of a public offense that has been, is being, or is about to be committed; or,

(2) Where the information from the tracking device or signal transmitted by the electronic device may facilitate the arrest of a person who has been charged with a public offense either by warrant, presentment, or indictment.

(c) A surveillance warrant shall be supported by a written application made under oath by a law enforcement officer and must set forth facts tending to establish probable cause of the grounds for the warrant. The application should include:

(1) The identity of the investigative or law officer making the application;

(2) The identity of the person, if known, using the item or electronic device;

(3) A statement of the facts relied upon by the applicant;

(4) A description and the circumstance of the offense and the reasons the location of the item or electronic device may provide evidence of the offense or location of the fugitive;

(5) A description of the real property upon which an officer will enter to emplace the mobile tracking device;

(6) A description of the unserved warrant or capias and the last known whereabouts of the fugitive if a fugitive is the subject of the application;

(7) A statement of the period of time for which the tracking device is required to be maintained;

(8) Any other facts tending to establish probable cause of the grounds for the issuance of the warrant.

(d) The issuing judge, if satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, shall issue a surveillance warrant signed by the issuing judge. The warrant shall:

(1) Identify the officer making the application for the warrant; Identify the name, if known, of the user of the item or electronic device that will be the subject of the surveillance;

(2) List the grounds upon which the warrant was issued; Describe the item or electronic device that will be the subject of the surveillance;

(3) Authorize the emplacement of a mobile tracking device and describe the real property upon which an officer may enter to emplace the tracking device;

(4) Direct the wire or electronic communication service provider to deliver information pertaining to the location information of the electronic device;

(5) List the date and time the warrant was issued; and,

(6) Include any other matters the judge deems necessary.

(e) The emplacement of the tracking device or notification to the communications service provider must occur within ten (10) days of the issuance of the order, after which period the unserved warrant is void. The judge shall retain a copy of the warrant and application or affidavit. All warrants, applications and affidavits granted under this section shall be treated as confidential and shall not be open for inspection by members of the public. Such warrants shall not be disclosed except to law enforcement officials in aid of the investigation.

(f) The warrant shall authorize the receipt of location information for a period not to exceed sixty (60) days. The warrant may authorize remote access of location information for any offense under the jurisdiction of the issuing court. This period may be extended for sixty (60) days at a time upon application to a judge and a showing of probable cause. While the warrant is in effect, a law enforcement agency may repair or replace the device when required.

(g) The surveillance warrant shall be returned to the judge within (10) days of expiration of the warrant. Within ninety (90) days after the expiration of the warrant a copy of the warrant shall be provided to the user of the property or device, if known. This period may be extended by a judge upon written application and a finding of good cause. In the event that the identity of the user of the electronic device cannot be reasonably ascertained, then the officer shall notify such other person as the judge directs, or the judge may order that the officer dispense with service. After the warrant has been provided to the user, or the 90 day period for such service has expired, the officer shall file the warrant and supporting application or affidavit with the clerk.

(h) The contents of information obtained from a surveillance warrant, or any evidence derived there from, shall not be received in evidence or otherwise disclosed in any proceeding in state court unless each party has been furnished a copy of the surveillance warrant and accompanying application or affidavit.

After an indictment is returned, a copy of the warrant, application or affidavit in support, and location information received shall be provided to an accused under the provisions of Rule 16 of the Rules of Criminal Procedure.

(i) A wire or electronic communication service provider, or other person furnishing technical assistance in the execution of a surveillance warrant, shall be compensated by the applicant for reasonable expenses incurred in providing the assistance requested to execute a surveillance warrant.

(j) No surveillance warrant shall be required under this section when the information provided for in this section may be obtained without a warrant under the constitution of the United States of America or the State of Tennessee, or where the owner, bailee, or user of an item, consents to the emplacement and monitoring of a tracking device as part of a criminal investigation. Nothing in this chapter shall prevent a law enforcement officer from obtaining precision location information without a court order in an emergency as permitted by 18 U.S.C. § 2702(b), or obtaining an emergency pen register order under 18 U.S.C. § 3125.

(k) No civil cause of action shall lie against any service provider who in good faith relies upon a warrant or order directing it to provide information to a law enforcement officer in accordance with this chapter.